

Application No. 09/935,173

REMARKS

Applicant has carefully studied the outstanding Official Action mailed on June 29, 2004. This response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Applicant wishes to express his gratitude to the Examiner for the courtesy of a telephone interview with Applicant's representative David Klein, Patent Agent Reg. No. 41,118. During the interview, amendments present herein were discussed and it is believed were favorably received by the Examiner.

Claims 1, 2, 4-10 and 21 stand rejected under 35 USC §102(b) as anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Yachia et al.

Claims 3 and 14-19 stand rejected under 35 USC §103(a) as being unpatentable over Yachia et al.

Claim 20 stands rejected under 35 USC §103(a) as being unpatentable over Yachia et al. in view of Rosenbluth.

The claims have been amended as follows:

a. Claim 1: Examiner feels that the structure of Yachia et al. inherently has the properties of trapping embolic material. Examiner agrees that none of the prior art, including Yachia et al., discusses or hints at trapping embolic material with such structure. It follows that the claimed stent structure plus the inclusion of embolic material stored in the trapping region is novel and unobvious structure, not shown or contemplated heretofore. Accordingly, the embolic material stored in the trapping region has been positively claimed in claim 1.

Applicant respectfully feels that embolic material (defined in the specification in the background "Stenotic material trapped between the stent and the vessel wall may extend into the openings in the mesh or coil, and may be sheared off by the longitudinal compression of the stent to create loose embolic debris") is not part of the human body and thus may be positively claimed. This is in accordance with the statute. In MPEP 2100 it is stated "If the broadest reasonable interpretation of the claimed invention *as a whole* encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter." This is presumably the reason for allowing the following claim in US Patent 6754472:

"1. A network of devices comprising: a first device for generating a first electrical signal;

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a second device including first circuitry requiring an electrical signal from an external source to operate, wherein the second device generates initialization information including at least power requirement information; and

a body of a living creature for coupling the first device to the second device and for conducting the electrical signal from the first device to the second device and the initialization information from the second device to the first device, wherein the first and second devices establish a master and a slave relationship there between.” (Note that the “body of a living creature” is positively claimed; it should definitely be statutory to claim the embolic material stored in the trapping region.)

b. Claim 4:

Claim 4 has been amended to recite the structure (shown in the embodiment of Fig. 1) of the downstream convergence being asymmetric, that is, it tapers towards the longitudinal axis on one side thereof and on an opposite side thereof does not taper. Also the trapping region comprises a divergent portion that is asymmetric about the longitudinal axis comprising a point at which the divergent portion tapers towards the longitudinal axis on one side thereof and on an opposite side thereof tapers away from the longitudinal axis. Examiner has agreed in the interview that this is patentable over the art.

c. New Claim 22:

Claim 22 has been added to recite the structure (shown in the embodiment of Fig. 2) of the “downstream portion being separate and discontinuous from said upstream portion”. Examiner has agreed in the interview that this is patentable over the art.

Claims 5-13 and 15-21 have been canceled as not being necessary anymore. Claim 14 has been amended to depend from claim 4. Claim 23 has been added to depend from claim 22 similar to claim 14.

Thus claims 1-4, 14 and 22-23 are believed to be allowable.

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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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(Name of Applicant's Representative)

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(Signature)